Rc200267
Air Permit Program Approval
June 6, 2001

TITLE 326 AIR POLLUTION CONTROL BOARD

#00-267(APCB)

SUMMARY/RESPONSE TO COMMENTS FROM THE SECOND COMMENT PERIOD

The Indiana Department of Environmental Management (IDEM) requested public comment from April 1, 2001, through April 30, 2001, on IDEM's draft rule language. IDEM received comments from the following parties:

Guinn P. Doyle, Barnes & Thornburg	(BT)
Alphonse McMahon, General Electric Company	(GE)
Bernie Paul, Eli Lilly and Company	(Lilly)

Following is a summary of the comments received and IDEM's responses thereto.

Comment: Commentor objects to the proposed limitation in 326 IAC 2-1.1-3(e)(5)(b) and 326 IAC 2-7-1(21)(G)(i)(BB) that only diesel fuel fired engines can be considered insignificant activities or exempt from new source permitting. This would mean engines of similar size and design that burn cleaner fuels, such as natural gas or propane, are not automatically exempt. A specific item for natural gas/propane fired engines in the permit exemption list and the insignificant activity list should be included. (Lilly)

Response: AP-42 Table 3.2-1 and 3.3-1 only have emission factors for natural gas, diesel and gasoline internal combustion engines. Gasoline would exceed the threshold for carbon monoxide, but natural gas would not. IDEM has added natural gas fired engines to this exemption. If there are data available showing that other fuels can be combusted without exceeding exempt thresholds, then IDEM will consider revising the rule to include those fuels as well.

Comment: In relation to 326 IAC 2-1.1-9.5, what is the rationale for imposing a limited term upon permits to construct or operate and permit modifications, but not upon registrations, modification approvals, and permit revisions? (GE)

Response: The new section, 326 IAC 2-1.1-9.5, was designed to clarify the supersession of previous construction permits so that the Title I conditions will continue. All of Indiana's permits expire in five (5) years as stated in Indiana statute at IC 13-15-3-2. Registrations and exemption letters do not expire. Additional clarification will be provided in a future rulemaking planned to correct problems and clarify language in all of 326 IAC 2.

Comment: In 326 IAC 2-2-1(w)(6)(B), it is not clear what is meant by "complying with 326 IAC 2-5.1-3 or 326 IAC 2-7 and 40 CFR 52.21* or this rule". IDEM should clarify this provision. (GE)

Response: The provision is intended to indicate that the permittee received a construction permit or a Title V source modification approval that contains provisions required by the federal or state prevention of significant deterioration (PSD) rule, 40 CFR 52.21 or 326 IAC 2-2 respectively. IDEM has revised the language to clarify the meaning.

Comment: Commentor supports the addition of ozone-depleting substances with a significance rate of 100 tons per year to the list of pollutants in 326 IAC 2-2-1(hh)(1). As a minor grammatical fix, the listed name should be changed to "Ozone-depleting substances (ODS)". (GE)

Response: IDEM concurs and has made the correction.

Comment: In 326 IAC 2-2-12, the phrase "prior to the effective date of this section" means prior to March 10, 1988, the effective date of section 12. What is the reason for limiting the ability of the owner or operator to make a request for a permit rescission to permits issued before March 10, 1988 (or, for that matter, any other date)? The owner or operator ought to be able to request rescission for any permit, regardless of its date of issuance. Does this date apply to only "this rule [326 IAC 2-2]" or to both "40 CFR 52.21 and this rule"? This language is ambiguous. The phrase ", prior to the effective date of this section," should be deleted. (GE)

Response: The phrase "prior to the effective date of this section" will actually mean prior to the effective date of this rulemaking when it is complete. Section 52.21(w) of Title 40 of the Code of Federal Regulations contains the federal provision that is parallel to this state provision. Section 52.21(w) was originally added to the federal rule during a major revision on August 7, 1980 (45 FR 52676) for the purpose of allowing sources to request that the U.S. EPA rescind any old provisions of the prevention of significant deterioration (PSD) requirements that were no longer in effect or outside the coverage of the revised PSD program. The date was updated to July 30, 1987 on July 1, 1987. The significance of this date in the federal rule is that it is the day before the effective date of the provisions that implemented the revised National Ambient Air Quality Standard (NAAQS) for particulate matter by changing the indicator for particulate matter from total suspended particulate (TSP) to particulate matter less than 10 microns (PM_{10}) on July 1, 1987 (52 FR 24672). This change was also reflected in the federal PSD rule, and the purpose of 40 CFR 52.21(w) is to allow sources to request rescission of permit provisions that are no longer applicable because of revisions to these rules. This date did not change in subsequent revisions to the federal rule because those changes were not intended to affect previous PSD conditions.

Since IDEM is removing TSP from the NAAQS and increment provisions of 326 IAC 2-2 and significantly revising 326 IAC 2-2, IDEM has included the effective date of this rulemaking as the rescission date cutoff for the state rule. This provision will apply to both 40 CFR 52.21 and this rule

since IDEM has been delegated authority under 40 CFR 52.21 and will not have an approved PSD program prior to the effective date of this section. No changes to the section are necessary.

Comment: In 326 IAC 2-2-12, the reference to "this section" in subsection (2) appears to be a long-standing typographical error. The question is not whether "this section", i.e., section 12, applies to the source or modification, but whether the rule that contains section 12, i.e., 326 IAC 2-2, applies to the source or modification. IDEM should correct this error by changing "section" to "rule". (GE)

Response: IDEM concurs that the reference to "section" in 326 IAC 2-2-12(2) should be changed to reference the "rule" and has made the correction.

Comment: In 326 IAC 2-2-12, the use of the word "title" appears to be in error. The word "title" should be changed to "rule" because, while section 12 is a part of the state's PSD rule, it is not a part of any other rule in Article 2 or in Title 326. If the word "title" is truly intended, then this provision is of general applicability and does not belong in Rule 2, but rather in Rule 1.1. (GE)

Response: IDEM concurs that "title" should be changed to "rule" and has made the correction.

Comment: In 326 IAC 2-2-12, the meaning of the phrase "as follows" at the end of the introductory language is unclear. The language that follows has nothing to do with rescinding, modifying, revoking, or the expiration of a permit pursuant to IC 13-15-6 or IC 13-15-7. Instead, the language that follows is a method of rescinding the permit in addition to the statutory provisions cited. The phrase "as follows" should be deleted. A new introductory sentence should be added after the first sentence that reads "In addition:". (GE)

Response: The purpose of this section is to provide additional detail specifically related to permit recission for PSD requirements rather than to repeat the language already in the statute. To avoid confusion, IDEM has removed the reference to statutes, though compliance with applicable statutes is still required.

Comment: In 326 IAC 2-2-14(i), the phrase "of the department" should be inserted after "of the following actions" for clarification. (GE)

Response: The introductory language in 326 IAC 2-2-14(i) clearly states that the department shall transmit the applications and provide notice of the actions listed. The phrase "of the department" would be redundant. It is also clearly stated earlier in the section that the department notifies the federal land manager and federal officials. No changes have been made to this provision.

Comment: The commentor is not familiar with the term "advanced notification of a permit application" used in 326 IAC 2-2-14(i)(1). If IDEM intends that this paragraph require IDEM to notify EPA of IDEM's receipt of a permit application, then the phrase "advanced notification of" can be

deleted. If IDEM intends something other than this, IDEM should explain what is intended. (GE)

Response: The term "advanced notice of a permit application" does not refer to the permit application itself. The requirement to notify U.S. EPA of the permit application is contained in the introductory language in 326 IAC 2-2-14(i). Major sources often voluntarily arrange meetings with IDEM prior to submitting a PSD application to discuss the content of the application and the scope of the project. This provision is intended to reference that type of voluntary notification. Since this provision is strictly for IDEM actions, IDEM does not believe that further explanation of the language in the rule is necessary.

Comment: The proposed removal of the concept of "federally" enforceable from 326 IAC 2-2 is consistent with recent court rulings that invalidated federal enforceability as an element of potential to emit. There are other instances where the concept of federal enforceability should also be deleted for the same reasons. IDEM should consider deleting the terms in the following provisions: 326 IAC 1-2-2; 326 IAC 2-1.1-1(16); 326 IAC 2-3-1(c)(3); 326 IAC 2-3-1(t)(2)(D); 326 IAC 2-3-1(v); 326 IAC 2-3-2(c); 326 IAC 2-3-3(a)(3); 326 IAC 2-3-3(b)(5); 326 IAC 2-3-3(b)(8); 326 IAC 2-7-1(13)(A); 326 IAC 2-7-1(14); 326 IAC 2-7-1(29); 326 IAC 2-7-5(11); 326 IAC 2-7-5(11)(B); 326 IAC 2-7-12(b)(1)(D)(i); 326 IAC 2-7-22(a); 326 IAC 2-8-4(11); 326 IAC 2-8-4(11)(B); and 326 IAC 2-13-1(j)(3). The language in 326 IAC 2-7-1(29) includes the concept of federal enforceability. This is equivalent to the "federally enforceable" language in 326 IAC 2-2 from which IDEM is proposing to delete "federally". The "federally enforceable" requirement in the Part 70 rule should be removed, just as has been proposed for the PSD rule. In addition, the word "federally" should be removed from the following provisions of 326 IAC 2-7: 1(13)(A); 1(14) (2 places); 1(36); 5(11) (2 places); 12(b)(1)(D)(i); and 22(a). (Lilly) (GE)

Response: This rulemaking involves: (1) changes to the Part 70 operating permit program to obtain full program approval; (2) changes to the major new source review provisions in attainment areas to obtain approval as part of the state implementation plan; and (3) implementation of the requirements of Public Law 112-2000. It does not include the major new source review provisions for the nonattainment areas. With the exception of the PSD rule and a change related to FESOPs and MSOPs, IDEM is not recommending that the board delete the adjective "federally" at this time. This change can cause other consequences, such as affecting the hierarchy of the different state permit levels. IDEM prefers to address the overall issue of federally enforceable in a future rulemaking.

Comment: In 326 2-7-1(21)(A), IDEM needs to update the reference from 326 IAC 2-1.1-3(d)(2) to 326 IAC 2-1.1-3(e)(2) because IDEM changed the numbering system in 326 IAC 2-1.1-3. (GE)

Response: IDEM concurs and has made the correction.

Comment: The rule, as currently written, requires persons who have been issued an operating permit under 326 IAC 2-6.1 to apply for a federally enforceable state operating permit when the permit issued under 326 IAC 2-6.1 expires. This, in effect, requires a facility that has taken a limit under a permit issued under 326 IAC 2-6.1 to apply for a FESOP even though the source would, under rules as revised by this rulemaking, not be a "major source" subject to the Title V permit requirements. The language in 326 IAC 2-7-2(b)(5)(B) should be amended to read as follows:

> (b) The following source categories are exempt from requirements of a Part 70 permit:
> (5) A major source that has become non-major through the issuance of (1) one of the following permits:
> (A) a federally enforceable state operating permit under 326 IAC 2-8 or;
> (B) a valid ~~inital~~ operating permit under 326 IAC 2-6.1, that the commissioner determines has established enforceable conditions limiting potential to emit to less than the applicability levels of this rule.

Alternatively, 326 IAC 2-7-2(b)(5) could be deleted since a source which is not a major source because its potential to emit is limited by enforceable permit conditions (not just FESOP conditions) is not required to obtain a Title V permit. (BT)

Response: Regardless of whether the limits on potential to emit need to be federally enforceable, Indiana's fee structure requires the more significant sources pay higher fees to support compliance-related activities. Sources that obtain FESOPs take on an additional applicable requirement, that is the limit on potential to emit. Sources that obtain FESOPs are, in general, larger sources of air pollution. For both of these reasons, IDEM focuses more compliance resources on sources with FESOPs than those with MSOPs. Therefore, IDEM believes that the FESOP level of approval is appropriate for reasons other than federal enforceability.

Comment: Commentor objects to the proposed deletion of 326 IAC 2-7-5(1)(E). Removal of this provision means the permittee may be subject to enforcement for two violations when only one violation has occurred. Because this provision was not identified as a program deficiency in U.S. EPA's interim approval of the Indiana Title V program, IDEM should request a notice of deficiency from U.S. EPA before any action is taken on this provision. (Lilly)

Response: IDEM recommends that the board not delete 326 IAC 2-7-5(1)(E) from the rule at preliminary adoption. IDEM is continuing to discuss this issue with the U.S. EPA.

Comment: Commentor objects to the proposed deletion of the emergency defense provisions for "health-based" emission limitations. The commentor recognizes that U.S. EPA has requested IDEM to remove this provision. Because this provision was not identified as a program deficiency in U.S. EPA's interim approval of the Indiana Title V program, IDEM should request a notice of deficiency from U.S. EPA before any action is taken on this provision. If IDEM is unsuccessful at preserving the emergency

defense, IDEM should revise 326 IAC 1-6 and 326 IAC 2-7-16(d) so that the malfunction rules will apply to Title V sources. (Lilly)

Response: The removal of "heath based" is consistent with the Clean Air Act. Part 70 only allows emergency defense for non-compliance with technology based limits. IDEM must remove the allowance of emergencies to be an affirmative defense for non-compliance with a health based emission limitation so that the state program will comply with federal requirements.